Supreme Court, U.S.
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No. 01-262

In The

Supreme Court of The United States

IN RE FRANK R. BONCZYK

v.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Before LOURIE, BRYSON, and Linn, Circuit Judges
LOURIE, Circuit Judge

On Petition For Writ Of Certiorari

To The U.S. Court of Appeals For The Federal Circuit

PETITION FOR WRIT OF CERTIORARI

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48 pp

Introduction: By consent or assault certain act[s] are performed between persons of opposite nature (donor and recipient) whereby, inherent properties of their being combine to create a structure[s] with certain inalienable function[s] and ability. The created structure[s] assembles toward an inevitable, time honored, predisposed conclusion—in this case human.

The invention "Fabricated Energy" claims and specification evoke property rights of, but not limited to elements structure[s] and matter created and given up by a constitutionally protected right of privacy. Hence, matter given up that does not serve the ends nature originally provides is available to serve, source and host human-made elements of the invention.

QUESTIONS PRESENTED:

Whether human-made elements of primary life structures that define the essence of this Court's vaguely defined non-viable (fetus) patentable subject matter under 35 U.S.C. §101.

BOARDS DECISION

Frank R. Bonczyk appeals from the decision of the United States Patent and Trademark Office Board of Patent Appeals and Interferences rejecting the claims of U.S. Patent Application Serial No. 08/578,325 for failure to meet the requirements of patentable subject matter under 35 U.S.C. § 101. Ex parte Bonczyk, Appeal No 1988-2474, slip op. at 7 (Bd. of Pat. App. & Inter. July 31, 2000) (Paper No. 15) ("Bonczyk"). Because the Board's decision is correct as a matter of law, we affirm.

Petition for Writ of Certiorari to Constitutionally define statutory category of patentable subject matter under 35 U.S.C. § 101.

Viable and Non-viable definitions applied to primary life structure[s] (fetus) by the court are vague and place discretionary power in the hands of physicians[1] whom must enter the womb and there decide when and if constitutional law applies. For the same reason, petitioner contends that the decision of the court of appeals conflicts with this Court's ruling by law to impose conditions greater than the conditions imposed and retained by this Court. With dire consequence the Appeals Court chose to use common definitions[2] rather than those otherwise defined in the application. Such case, Roe *v. Wade, 496 U.S. 72 (1990),* address a situation in which there is no conflict between this

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[1] *Colautti v. Franklin*, 439 U.S. 379 (1979). A judiciary trend expands, whereby the court recognizes and relies on physicians to decide jurisdiction of constitutional matters with one hand and practice medicine with the other as if they held sacrosanct power that goes beyond the court.

[2] Court reliance (appendix P5) on the definition, "McGraw-Hill Dictionary of Scientific and Technical Terms 680 (5th ed. 1994). "Energy per se is the capacity to do work..." is wrong. Wrongs to ignore the petitioner's application that define in full detail the principles and functions of energy used to construct the invention. *Perrin v. United States, 444 U.S. 37, 42 (1979)* "unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning"

courts imposition of greater conditions and Constitutional law sans adequate definition of human life. [3] Here, there is a conflict, because the federal scheme did not simply permit the claim[s] their intended expression in specified circumstances but limited the claims to other circumstances.[4]

There is no conflict among the court of appeal and the Board on the questions presented by petitioner, as Board admits, "...we simply do not understand the nature of the invention."[5] (Opinion 3, 4). Petitioner nonetheless urges this

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[3] The U.S. Supreme Court does not define and claim life in its jurisdiction except for those instances where Constitutional law applies to viable human life. However, under provision of the 10th Amendment Bill of Rights, the petitioner does not preempt this court to define patent claim limits outside the court's constitutionally defined jurisdiction of non-viable structures (fetus); the evident qualified §101 statutory subject matter and property of those claim[s].

[4] Opinion's reliance (Opinion. 5-6) on *Diamond v. Dier, 450 U.S. 175, 185 (1981), O'Reilly v. Morse, 56 U.S. (15 How.) 62, 113 (1853), In re Perrigo. 48 F.2d 965, 966, 9 USPO 152, 152 (CCPA 1931)*, is also misplaced. Those decisions concern the issue whether a court should rely on subject matter that does not qualify as §101 statutory subject matter rather than fashion federal common law rule when the court must fill in the interstices of a patent claim constitutionally defined. They do not concern the question presented here—under what circumstances federal law preempts conflicting constitutional law.

[5] Energy is the source of all life. To know life one must understand the basic principles and function of energy. The petitioner's patent application claim "energy rootstock" of primary life structures in whole or of their individual parts and named the original elements M + E in Description of Preferred Embodiment, BON and ZYK , which has precise meaning, respectfully referred to simply as, Sphericals. The petitioner assumes the obvious nature of the invention. If misunderstood by the PTO, great hazard looms. The PTO bound by such innocence now compromise to provide patent protection to applicants whom simply cannibalize the essence of petitioner's claim, e.g., patent No. 5,851,832 among others.

Court to grant review on the basis of "the decision emerging from the court of appeals conflict with this Court's ruling by law, thereby deprive substantive due process and protection of property rights.

This Court's review is warranted based on petitioner's assertion that the appeals court applied different and vague rationales[6] in reaching their uniform results.

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[6] The court/PTO language excludes the PTO's admitted mistake in its opinion, (See Examiner's Ans. P30), defers PTO's conflict of reason, (See Pet. Inf. Br. P13-14) as irrelevant. On the contrary, the flux of conflict posed by the PTO misguided the petitioner. Effort to satisfy the patent requirements went amiss and continued throughout the patent process until finally the PTO admitted it was mistaken -- dropped the 'already exist in nature' and held to the 'theoretical abstract concept' -- time run out.

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

01-1061
(Serial No. 08/578,325)

IN RE FRANK R. BONCZYK

DECIDED: May 11, 2001

Before LOURIE, BRYSON, and LINN, Circuit Judges
LOURIE, Circuit Judge.

DECISION

Frank R. Bonczyk appeals from the decision of the United States Patent and Trademark Office Board of Patent Appeals and Inteferences rejecting the claims of U.S. Patent Application Serial No. 08/578,325 for failure to meet the requirements of patentable subject matter under 35 U.S.C. § 101. Ex parte Bonczyk, Appeal No 1988-2474, slip op. at 7 (Bd. of Pat. App. & Inter. July 31, 2000) (Paper No. 15) ("Bonczyk"). Because the Board's decision is correct as a matter of law, we affirm.

DISCUSSION

Mr. Bonczyk is the named inventor of the '325 application, which relates to a "fabricated energy structure." The appealed claims stand or fall with claim 1 because Bonczyk has not argued them separately. See In re Schrader, 22 F.3d 290, n.3, 30 USPQ2d 1455, 1456 n.3 (Fed. Cir. 1994); 37 C.F.R. § 1.192(c)(7) (2000). Claim 1 reads as follows:

1. A fabricated energy structure for a uniform energy of the type having a single nature separated to oppose itself by a precise alternate time duration of existence that creates the dual nature for supporting and extending the Fabricated energy comprising a unitary structure of a single Base Particle (Bp) set to a time opposed opposite (Bp') of itself that together provides the functions of energy molded from decayed energy from 'The Unified PO Realm' and including a lattice strand portion in the form of a consequential open strip adapted to curve in attempt to bind at the ends in a trivial or nontrivial bundle to form the ring strand, producing a trivial or nontrivial structure, that will act as an energy root stock, said strand portion including a symbiotic mass assembly portion (rib) at one end thereof as residual, and an integral orthogonal stem portion extending from said strand portion to support and structure one (+) and the other (-) energy nature in the elevated position to monitor, interpret, adapt, maintain other neighboring energy structures and to duplicate of itself.

The United States Patent and Trademark Office ("PTO") rejected the claims under 35 U.S.C. § 101, stating that a theoretical energy model did not correspond to any of the statutory classes of subject matter defined in § 101, viz., processes, machines, manufactures, or compositions of matter. Bonczyk, proceeding pro se, amended some claims to replace the word "model" with the word "structure" and replied that the "structured Fabrication of Energy" was a composition of matter and therefore directed to statutory subject matter. The PTO issued a final rejection, holding that Bonczyk had failed to disclose any new composition of

matter in his description of the energy model. The Board affirmed the rejection under 35 U.S.C. § 101 because it agreed that the invention's subject matter did not fall into any statutory category, stating "that the invention appears to be a conceptual model completely divorced from any physical structure or practical application." Bonczyk at 7. Bonczyk appeals that judgment; we have jurisdiction pursuant to 28 U.S.C.A. § 1295(a)(4)(A) (West Supp. 2000).

On appeal, Bonczyk argues that the Board erred in determining that his invention is not a composition of matter. Alternatively, he argues that his invention is a "manufacture" under the Supreme Court's interpretation of § 101 in Diamond v. Chakrabarty, 447 U.S. 303, 206 USPQ 193 (1980). Bonczyk also argues that his claim is directed to a combination of interrelated elements reciting a specific "machine." Bonczyk also requests this court to determine the proper statutory category for this invention. Finally, he argues that the Board erred in determining that the claimed invention was both a theoretical energy model and a new way of describing something that already exists in nature.

We review the Board's legal conclusion whether a claim is directed to statutory subject matter de novo. Arrhythmia Research Tech. V. Corazonix Corp., 958 F.2d 1053, 1055, 22 USPQ2d 1033, 1035 (Fed. Cir. 1992). We conclude that the Board did not err in rejecting the claims for failing to recite subject matter within any of the four statutory classes defined by § 101, which authorizes the grant of a patent to "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof...." 35 U.S.C. § 101 (1994). Pursuant to its authorization under art. 1, § 8, cl. 8, of the United States Constitution to promote the progress of science and useful arts, Congress has specified the types of subject matter that may be patented in § 101. Patentable subject matter must fall within one of these statutory categories.

The Board candidly concluded that, "though we have tried mightily, from appellant's arguments and from the instant disclosure, to comprehend what appellant regards as his invention, we simply do not understand the nature of the invention." Bonczyk's arguments on appeal do not clarify the Board's lack of understanding; rather, they demonstrate Bonczyk's own confusion as to the nature of his invention. He argues variously that his invention is a composition of matter, an article of manufacture, and a machine. His conclusory assertions are not supported by the specification or the cited cases.

Bonczyk's amendment of the originally filed claims to replace the term "model" with "structure" does not convert his invention into a composition of matter, absent a showing that the invention is tangible, corporeal, or material, or a composition of two or more such substances. See Diamond v. Chakrabarty for the definition of an article of "manufacture" as made "from raw materials prepared by giving to these materials new forms, qualities, properties, or combinations whether by hand labor or by machinery," id. But he does not explain how his invention is manufactured or from what materials it is manufactured.

Bonczyk next asserts that his invention is a machine, stating that it is directed to the function of a combination of interrelated elements and corresponds to a structure disclosed in the specification. We do not agree that the appealed claims define a machine-like structure or that they should be classified as a machine. Bonczyk's vague assertions of functionality correlating to the function of seeds and references to various structures do not convert the disembodied concepts in the description of his invention to a machine, which is a concrete thing, consisting of parts or of certain devices and combinations of devices. See Burr v. Duryee, 68 U.S. (1 Wall.) 531, 570 (1863) (defining "machine").

Bonczyk requests that this court identify the appropriate category of subject matter for his invention if we do not agree with his characterization of his invention. Since determining the proper statutory category of subject matter is a question of law, we conclude, as the claims state, that they attempt to claim a form of energy. The word "energy" appears eight times in claim 1. It is clear that Bonczyk is attempting to claim an energy state rather than a composition of matter, an article of manufacture, or a machine. While matter and energy may be interconvertible under certain circumstances, the appealed claims do not claim matter – they claim an energy structure. Energy per se is the capacity to do work,* which is a natural phenomenon that does not qualify as patentable subject matter. See Diamond v. Diehr, 450 U.S. 175, 185 (1981) (identifying three classes of subject matter that do not qualify as § 101 statutory subject matter: laws of nature, natural phenomena, and abstract ideas); O'Reilly v. Morse, 56 U.S. (15 How.) 62, 113 (1853) (holding that a claim to electromagnetism for the purpose of printing characters was invalid because it was a claim for the effect of using of electromagnetism, distinct from the process or machinery necessary to produce it).

Having decided that the claimed subject matter does not correspond to any statutory category of subject matter, we need not reach the alternate ground of affirmance asserted by the Direct, viz., that the claimed subject matter lacks practical utility. See In re Warmerdam, 33 F.3d 1354, 1361-62, 31 USPQ2d 1754, 1760 (Fed. Cir. 1994 (holding that a "data structure" is not a machine or otherwise within the statutory subject matter of § 101 without evaluating its utility). But see In re Perrigo, 48 F.2d 965, 966, 9 USPQ 152, 154 (CCPOA 1931) (holding that claims to an electromotive force from the accumulation of ether waves were unpatentable for lack of utility under § 101).

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* McGraw-Hill Dictionary of Scientific and Technical Terms 680 (5th ed. 1994).

Bonczyk has argued that the PTO has inconsistently referred to his invention both as a theoretical energy model and as a new way of describing something that already exists in nature. Even if he is correct, it is irrelevant to the question whether Bonczyk has claimed subject matter within the statutory classes. Inconsistent statements made by the PTO during prosecution do not, without more, entitle an applicant to a patent. Any such inconsistency understandably arises out of the conceptually difficult and intangible nature of the claimed subject matter and is irrelevant to the ultimate question of patentability. Bonczyk admits that he has deliberately avoided using "conventional names for elements and structure to identify them, so as not to compromise the invention with features void in the definition associated with those elements and terms." His choice to resist conventional language has the unfortunate consequence for his application that it is difficult to identify what his invention is. As in O'Reilly v. Morse, even if Bonczyk has pioneered a new concept with enormous practical potential, the claims as filed do not qualify as patentable subject matter under § 101 because they are not directed to the statutory classes of subject matter. O'Reilly, 56 U.S. at 113. Because the Board did not err in determining that Bonczyk's application does not fit within any of the statutory categories of patentability under § 101, we affirm.

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

United States Patent and Trademark Office

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte FRANK R. BONCZYK

Appeal No. 1998-2474
Application No. 08/578,325

MAILED
JUL 31 2000
PAT.& T.M Office
Board of Patent Appeals
and Interferences

ON BRIEF

Before THOMAS, KRASS and GROSS, Administrative Patent Judges

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1,9, 11, 12 and 14. Claims 15 and 19 stand objected to as being improper multiply dependent claims.

The invention is entitled "Fabricated Energy" and independent claim 1 is reproduced as follows:

> 1. A fabricated energy structure for a uniform energy of the type having a single nature separated to oppose itself by a precise alternate time duration of existence that creates the dual nature for supporting and extending the Fabricated energy comprising a unitary structure of a single Base Particle (Bp) set to a time opposed opposite (Bp') of itself that together provides the functions of energy molded from decayed energy from the 'The Unified PO Realm' and including a lattice strand portion in the form of a consequential open strip adapted to curve in attempt to bind at the ends in a trivial or nontrivial bundle to form the ring strand, producing a trivial or nontrivial structure, that will act as an energy root stock, said strand portion including a symbiotic mass assembly portion (rib) at one end thereof as residual, and an integral orthogonal stem portion extending from said strand portion to support and structure one (+) and the other (-) energy nature in the elevated position to monitor, interpret, adapt, maintain other neighboring energy structures and to duplicate of itself.

No references are relied on by the examiner.

Claims 1, 9, 11, 12 and 14 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Reference is made to the briefs and answer for the respective positions of appellant and the examiner.

OPINION

We affirm.

At the outset, we note that appellant is prosecuting this application pro se, without the assistance of a patent attorney or agent. While this, of course, is appellant's right and we would like to direct and aid such appellants wherever and whenever we can in making the appeals process easier and more understandable, we are, frankly, at a loss as to how to advise appellant in this case. We have reviewed the instant specification, as well as the entire record before us, including the arguments of appellant and the examiner and we cannot determine what comprises appellant's invention.

In general, during the patent process, a review of an application is made to determine, first, if a claimed invention is of the type which can, under statute (35 U.S.C. § 101), be patented. If the invention belongs to one of the statutory classes of invention, one would look next to see if the claimed invention is in accordance with the dictates of 35 U.S.C. § 112. That is, is there an adequate written description of the invention and would the skilled artisan have been enabled by the description to make and use the claimed invention? Further, a determination is made as to whether an applicant has described the best mode of practicing the invention and as to whether the claim language is sufficiently clear to particularly point out and distinctly claim that which an applicant believes is his/her invention. If the claimed invention passes must under 35 U.S.C. § 112, a determination is made as to whether the claimed invention runs afoul of the prior art under 35 U.S.C. §§ 102 or 103; that is, does the claimed invention infringe upon what is in the public domain?

In the instant case, the examiner rejected claims 1, 9, 11, 12 and 14 under 35 U.S.C. § 101 as being directed to non-statutory subject matter because they are "directed to a theoretical energy model." The examiner equated such a model to "scientific principles or descriptions of naturally occurring articles" and pointed out that the claims do not fall into one of the prescribed categories of invention under 35

U.S.C. § 101, viz., a process, a machine, an article of manufacture, compositions of matter or an improvement thereof. [See Paper No. 2; Aug. 8, 1996]. In the final rejection, the examiner says that "the claims are directed to a new way of describing something which already exists in nature." In response to appellant's principal brief, the examiner states that he "was mistaken in understanding this invention as a model of a naturally occurring article; however, the invention is still claimed as a conceptual model completely divorced from any physical structure."

For his part, appellant's responses in both the principal and reply briefs are of no help in ascertaining just what the claimed invention comprises and into which statutory category the invention falls. The principal brief rambles on about "structures;" following the function of energy; that the disclosure comprises both existence and non-existence and that there is "no peer in science to date that can co-ordinate the function of energy to create the applicant's structure" [page 7]. Appellant asks [principal brief-page6] "[w]here does nonexistence exist naturally in existence?" At page 7 of the principal brief, appellant states, "[t]he labyrinth of free parameters that weaken conventional physics understanding disqualifies any pragmatic conviction by anyone to evoke what does and what does not exist naturally in nature, in order to pass judgement." The reply brief makes statements about the Hubble telescope and of "the resultant principles of energy utilized in the invention on a Galactic scale" being "indicative of the invention's connection to physical structures" [reply brief-page 4].

In all honesty, though we have tried mightily, from appellant's arguments and from the instant disclosure, to comprehend what appellant regards as his invention, we simply do not understand the nature of the invention. From the amendment filed Nov. 7, 1996 (Paper No.3), appellant identifies the invention as a composition of matter, stating that the invention "is a structured 'Fabrication of Energy',

therefore is a prescribed subsequent 'Composition of Matter'." However, we are at a loss to find any recited "composition of matter" in the instant claims. It is instructive to look at dependent claims 14, 15 and 19 which further define what is recited in the independent claim as "life structures" or "biogenic structures" or "computer timing circuits, computer codes, computer algorithms, and or computer programming" or "fixed and or variable Symbols, Alpha/Numeric, Electronic/Biotic, Audio/Visual, however structured..." These recitations clearly do not sound like compositions of matter.

Appellant's arguments in the brief, though a bit philosophical, circuitous and generally obfuscatory, appear to indicate that the invention is type of "structure," rather than a composition of matter. However, it is not clear to us what kind of "structure" is intended and we agree with the examiner that the invention appears to constitute a "conceptual model completely divorced from any physical structure" [answer-page 3]. We note that the original disclosure described a "model" and a later amendment changed this term to "structure" but no such "structure" was adequately identified.

Independent claim 1 recites a "fabricated energy structure" but it is unclear what structure is intended or what "energy" is being referenced. The term, "The Unified PO Realm" is undefined and unidentified. The description of "a lattice strand" and the binding at the ends "in a trivial or nontrivial bundle to form the ring strand: sounds like some kind of chemical method being performed but appellant never identifies the category of the invention being a "process". Yet dependent claims, reciting "life structures" and computer structures appear to take the invention out of the category of some chemical process.

The description of the instant invention, the claims and appellant's arguments are so confusing and general that we

cannot ascertain into what statutory category of invention the instant invention falls. According, we agree with the examiner that the invention appears to be conceptual model completely divorced from any physical structure or practical application and, as such, we sill sustain the rejection of the claims under 35 U.S.C. § 101.

While we make no new grounds of rejection herein, we also note that the description and claim language describing the invention are so poor, in our opinion, that even assuming, arguendo, a proper statutory category could be found for this invention, serious questions arise as to the adequacy of the instant disclosure to enable the skilled artisan to make and use the claimed invention (35 U.S.C. § 112, first paragraph) and as to whether appellant has particularly pointed out and distinctly claimed that which he regards as his invention (35 U.S.C. § 112, second paragraph).

The examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this apppeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

"s/JAMES D. THOMAS".	)	
Administrative Patent Judge	)	
	)	BOARD OF PATENT
"s/ERROL A. KRASS".	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
"s/ANITA PELLMAN GROSS".	)	
Administrative Patent Judge	)	

VSH

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Frank R. Bonczyk v. United States Patent Office
No. 01-1061

Informal Brief of Appellant

Read the Guide for Pro Se Petitioners and Appellants before completing this form, Attach a copy of the final decision or order of the Board or Commission. Answer the following questions as best you can. Your answers should refer to the decision or order you are appealing where possible. Use extra sheets if needed.

1. Have you ever had another case in this court? ___Yes X NO. If so, state the name and the number of each case.

2. Did the Board or Commission incorrectly decide or fail to take into account any facts? X Yes ___No. If so, what facts? (Refer to paragraph 7 of the Guide.)

Argumentum ad judicium

(a) The reason given by the examiner for rejecting the claims, See Item 2, Decision by Board Page 4, " In the instant case the examiner rejected claims 1. 9. 11. 12 and 14 under 35 U.S.C. § 101 as being directed to non-statutory subject matter because they are **directed to a theoretical energy model."**

(b) The reason given by the examiner for rejecting the claims, See Item 6 Final Rejection, page 2, "..., the claims are **directed to a new way of describing something which already exists** in nature. To grant a patent on such a description would allow the patent owner to exclude others from using the naturally occurring structure....Such

exclusion would constitute the removal of the **naturally occurring** structure from the public domain.".

The reasons the examiner gives to reject the claims, (a) and (b) above, declare double syllogism. Therefore, PTO's rejection of the claimed invention is without cause.

(c) See Item 2 Decision by Board, page 4, "...In response to appellant's principle brief, the examiner states that he '**was mistaken** in understanding this invention as a model of naturally occurring article; however, the invention is still claimed as a conceptual model completely divorced from any physical structure."

The out-of-hand remark, "was mistaken" made by the examiner, attempts to restore its own defeated argument. The examiner's remark likens to a bombardier, who by simply saying, "I 'was mistaken' to have dropped the bomb!" — restores the city.

Notwithstanding the PTO's untenable position, the principle brief would act irrational to argue against the already defeated argument of the PTO. Instead, in light of the claims presented, the brief's focus points out that the criteria required by the PTO to reject the claims, are not in its possession. Evidenced by (a) and (b) statements above.

With respect to this court, the appellant wishes to note in this one place issues, to show the Board erred to affirm of the examiner decision. The Board: Without just cause reject's the claims; displayed obvious uncanny treatment to context of the statements extracted from the principle brief's argument, which overshadowed any effort they may have made to reference the specification in the right light; assigned the nature of the appellant with subtle innuendoes, that carries the intent to taint the right of the claims: proclaims innocence, and if allowed to supplant substantial evidence, in

effect, deny the appellant's Right to Patent Protection is injustice.

In view of the PTO's inconsistency and obvious confusion toward the claims, see Appendix Item 2 Decision by Board, page 5, "we simply do not understand the nature of the invention." Also see, "*MPEP* (page 1371), A. (last paragraph) " The applicant is in the best position to explain why an invention is believed useful...." carries more weight.

These issues are presented to the court as faux pas by the Patent and Trademark Office. Should the court find injustice prevails, the appellant begs this court to consider review de novo.

(d) See, Item 2 Decision by Board, page 6, "Independent claim 1 recites a "fabricated energy structure "but it is unclear what structure is intended or what "energy" is referenced. The term, "The Unified PO Realm" is undefined and unidentified."

The specifications clearly show these elements. The PO realm is defined and identified in the Description of Preferred Embodiment. See Appendix, Item 7 Application, Page 7, and Appendix, Item 10 Drawings, page 5 Fig. 3, page 6 Fig. 3a, also Item 10 Drawings, page 7 Fig. 4 shows an expanded view. The interrelated combination of elements of the energy structure is explained by the specifications and briefs in detail, see Appendix Item 5 Appeal Brief, page 2 and 3, lines 1 – 5. Also, Appendix Item 9, Drawing page 5 Fig. 3., illustrate the claim.

Did the Board or Commission apply the wrong law? X Yes If so, what law should be applied?

(a) Ref: citing *In re Donaldson*, 29 USPQ2d 1845 The court said that a claim directed to a combination of interrelated elements' **recites a specific machine**, not a disembodied

concept. A correct interpretation of the mean-plus-function elements in light of the specifications show claims 1,9,11 and 12 recite a statutory apparatus under §101.

(b) See Appendix, Item7 Application (Amended), page 16, Claims 14 and 15 recite structures that corresponds to the means in the specifications.

Ref: *Atmel* Corporation, 99-1082: "Section §112, ¶ 6...All one needs to do in order to obtain the benefit of that claiming device is to recite some structure corresponding to the means in the specification, as the statute states, so that one can readily ascertain what the claim means and comply with the particularity requirements of ¶ 2. The requirement of specific structure in § 112, ¶ 6 thus does not raise the specter of an unending disclosure of what everyone in the field knows that such a requirement in 112, ¶ 1 would entail."

(c) See Appendix Item 7, Application (Amended), page 17, "19. A structure as claimed in any one of the preceding claims, which consist of fixed and or variable Symbols, Alpha /Numeric, Electronic/Biotic, Audio/Visual, however structured for the purpose of interpretation, substitution or reproduction of each or any combination of each description and function of said invention to alter the intent and focus of said invention."

Claim 19 preserves the right of the appellant to define the terms and definitions in order to maintain the integrity of "what the claim means" as expressed in Section §112, ¶ 6.

Did the Board or Commission fail to consider important grounds for relief? **X Yes** If so, what grounds?

(a) The Board failed to consider the following, see Appendix, Item 7 Application (Amended), page 13, last paragraph of

Description of Preferred Embodiment, "The correlation of the invention with prior science, (e.g., particle characteristics and their given names) **succumb to routine mathematical processes.**"

Ref: *In re Donaldson*, 29 USPQ2d 1845 The Court stated that mathematical algorithms were not a type of subject matter expressly prohibited by §101; ...
Ref: *Atmel* Corporation, 99-1082, 35 U.S.C. § 112, 1, 2, and 6 (1994) "...Paragraph 1 permits resort to material outside of the specifications in order to satisfy the establishment portion of the statute because it makes no sense to encumber the specification of a patent with all the knowledge of the past concerning how to make and use the claimed invention. One skilled in the art knows how to make and use a bolt, a wheel, a gear, a transistor, or known chemical starting material. The specification would be of enormous and unnecessary length if one had to literally reinvent and describe the wheel."

5. Are there other reasons why the Board's or Commission's decision was wrong? **X Yes**

(a) The Boards statements were not supported by substantial evidence , see Appendix, Item 2 Decision by Board, pages 5 & 6; " 'life structure' or biogenetic structures' or 'computer timing circuits, computer codes, computer algorithms, and or computer programming...' These recitations clearly do not sound like compositions of matter."

(b) The above statement by the Board mirror the concern of the examiner, see Item 4 Examiner's Answer, page 3, "According to the brief, the claims are intended to cover such desperate articles as subatomic particles, a "programmable primary life form, a programmable primary memory system, or a programmable DNA structure, or a programmable biotic computer." It is not clear what these

things have in common that they could be claimed in a single invention.

Both the Board and examiner's concerns mentioned in (a) and (b) above are disclosed in public documents, articles and publications, see Item 12 Exhibits, page-2, (circled portion,) "Allen Boyle, "Micro-motors powered by DNA {MSNBC Technology , "NATURAL COMPUTERS..." The claims are in keeping, and proven true to events that have unfolded in various fields since the application was submitted, December 26, 1995

(c) See Appendix, Item 5 Appeal Brief, page 5, "Chakrabarty opinion also reveals, MPEP (page1368), " However, the production of articles for use from raw materials prepared by giving to these materials new forms, qualities, properties, or combinations whether by hand, labor or machinery (emphasis added) **is a manufacture under section 101."**

(d) Ref: citing In *re Donaldson*, 29 USPQ2d 1845 . The proper test for determining whether a claim is unpatentable, the court said, is " whether the claimed subject matter as a whole is a disembodied mathematical concept...which in essence represents nothing more than a 'law of nature.', 'natural phenomenon,' or 'abstract idea.'" The court said that a claim directed to a combination of interrelated elements' **recites a specific machine**, not a disembodied concept.

The claims structured in sequential interrelated detail throughout the specifications correspond to act all inclusive to a means–(or step) plus-function limitation as required by 35 U.S.C. §112 ¶ 2.. See, Item 10 Drawings, page 3, Fig.3b. The claimed structure, see Appendix, Item 9 Drawings page 5 Fig.3, shows assembly 10 (with incident timing T1 – T0 separating its opposing natures, indicated as +, —) subject to variables shown in, Drawing page 2 Fig. 1a, sequence of particle assembly, (7) of (1) through (10), (these variables are predisposed to the effect of structures

within its immediate natural environment, see Item 7 Application, page 15, Claims 11. and 12. , and at critical event/time intervals (neutral) are subject to hand/mind and or machine influence) that mutate the claimed structure. The new identity of the structure is preserved in a trivial or non-trivial bundle. see Item 10 Drawings page 5, Fig 3. , (1) & (2), the structures quality control. The industry seeks this quality control feature, see Appendix Item 10 Exhibits, page 3, "...Thus, ways must be found to map out bad circuits and at the same time take advantage of billions of circuits that function correctly." Depending on the structures bind, the claimed structure will then separate, duplicate and precisely reproduce its mutated structure. In the various field of endeavor flawed structures that typically bind non-trivial are commonly referred to as, in the field of; medicine 'malignant growths' (tumors, etc,); biogenetics, DNA, etc., 'markers'; Physics, 'critical mass'. The function of elements as structured in the claimed 'Energy Fabrication' correlate to the mechanism of seeds, (see Item 10 Drawings, page 7, Fig. 4, find 18 inside PO realm 33. Page 13, find 577. Page 8 shows ripening (sic) of PO realm 33.) the most basic stages of genetic structures, and is, as a complete functioning structure readily converted into algorithms for further use in a conventional computer.

A metaphor of an event: All intelligence placed in a single element precisely timed, creates another **taken" by the Hubble telescope**,' see Item 3 Reply Brief, page 4, "See FIG.3, Of Drawings, **NGC 686** corresponds to the inventor's structure at full, to oppose itself, any attempt to rejoin fails, instead an innocence is born, we call, "me".

(e) The appellant, also placed the structure on a galactic scale in the specifications. This was done to show that the interrelated principles of the claims followed true even in large scale assemblies of energy — the energy mechanism of stars. See, Item 2 Decision by Board, page 5 , " The reply

brief makes statements **about the Hubble telescope** and of 'the resultant principles of energy utilized in the invention on a Galactic scale "being" indicative of the invention's connection to physical structures" [reply brief-page 4]

In regard to Boards comment (g) above: Rather, the reply brief makes statements "**about pictures *L, *R** development...**NGC 7009** corresponds to the inventor's structure as it divides." Out of billions of stars the appellant chose Two (2), NGC 686 & NGC 7009 as examples to show the principles used in the invention hold true on a large scale energy structures.

The mechanics of optics has it so, that, "One's telescope is Another's microscope,...1, etc,...0, etc,...1, etc,... → Lim ∞"

Without reference to the specification to interpret the means-plus function elements, the Board found that the claims did not recite any physical structure. Doing so without providing reasonable explanation. Instead, appellant suffers comments couched with, see Appendix Item 2, Decision by Board, page 6, "clearly do not sound like", "invention appears to constitute", "sounds like some kind of" (continued) on page 7; "appears to take the invention out...", "invention appears to be conceptual model...", "... are so poor, in our opinion,..." "..., serious questions arise..."

See Item 2 Decision by Board, page 7, "serious questions arise as to the adequacy of the instant disclosure to enable the skilled artisan to make and use the claimed invention..."

With respect to this court, to state there is not one skilled artisan who could make and use the claimed invention simply establishes the high bar world intelligence maintains, no more. The claimed invention, outside of presenting the rosetta-stone, has presented enough sequential detail (with

examples, e.g., The claimed inventions coupling of photon regions. see, Item 10 Drawings, page, Fig. 9. And Item 7 Application, page 11, paragraph. FIG.9) to not only teach the invention, but also, to those skilled in the field who, with diligent study of the claims be able to use the invention in ways, to date, not even considered or if considered, thought impossible to achieve. The appellant can not afford the high cost to accept the protection such innocence provides — the cost of injustice.

What action do you want this court to take in this case?

The appellant would beg the court to grant the right of patent protection for the claimed invention — REVERSE and REMAND.

The appellant request, if within the court's jurisdiction, to advise/find a proper statutory category for this invention.

Do you want to argue before the court in person? __Yes **X** **No**. What are the reasons why argument will aid the court? (Refer to paragraph 15 of the Guide.)

The appellant's words carry no weight in matters placed before this court.

Do you intend to represent yourself? **X yes** ___ No If you have not filed a notice of appearance, indicate your full name, address, and telephone number.

I certify that a copy of this brief and any attachments was sent to **Office of the Solicitor, in care of Ms. Kristen L. Yohannan**, the attorney for appellee, at the following address: **Office of the Solicitor, P.O. Box**

15667, Arlington, Virginia 22215. (Address is found on the Notice of Appearance served on you by the attorney for the appellee. If you do not send a copy of this brief to the appellee, the court will not file the brief.)

November 24, 2000

Date
Appellant's signature

In addition to mailing a copy to the attorney for the appellee, mail an original and three copies of this informal brief and attachments to:

Clerk, United States Court of Appeals for the Federal Circuit

717 Madison Place, NW

Washington, DC 20439

REPLY BRIEF

(Serial No. 08/578,325)

IN RE FRANK R. BONCZYK

Frank R. Bonczyk, of Worcester, Massachusetts, submitted ProSe,

All Rights to Patent are those of

Sole inventor Frank R. Bonczyk

This is in response to Examiners Answer, Dated 22 Dec 1997

37CFR 1.193

1. Examiners Answers, Page 3, "The Examiner was mistaken in understanding the invention as a model of naturally occurring article"
2. The original wording of PTO's recanted understanding used the term, 'naturally occurring structure'. Ref: PTO office communication dated, 01/30/97, page 4, "To grant a patent on such a description would allow the patent owner to exclude others from using the naturally occurring structure described...Such exclusion would constitute the removal of the naturally occurring structure from public domain."

   Whereas, the greater part of the inventor's brief is given to argue the PTO's contention that held the applicant's structure as a "naturally occurring structure", and to that end, the brief presented hypothetical articles, i.e., "subatomic particles, programmable primary life form, a programmable primary memory system, or a programmable DNA structure, or a programmable biotic computer" that were mistakenly taken by the PTO as

disparate articles the inventor intended to be covered by the invention. Withstanding the Examiner's recant, the articles referred to are without basis and irrelevant.

However, the PTO's recant undermines the bulk of the inventor's appeal and allows the PTO an escape from its contradictory stand doggedly held since the application date, 12/26/95, i.e., a 'naturally occurring structure' vs. 'conceptual model completely divorced from any physical structure.' Though both present non-statutory subject matter, they each pose opposite sides of the argument. To declare the invention an article (structure) that 'occurs naturally', acknowledges the article as a physical structure. The inventor so guided is obliged to simply demonstrate to the PTO that the invention's structure is unique, and does not exist naturally. The question of the invention's existence as a physical structure is not at issue. An argument set to prove the invention does not occur naturally does not by any stretch simultaneously reduce the invention to a 'conceptual model divorced from any physical structure.'

The breech of the Appellant's argument remains intact to contend the PTO without proof continues to redefine the invention, and thereby compromise the inventor's right to patent protection.

3. Examiner's Answer page 3, "...Appellant's deliberate avoidance of conventional names for elements and structures so as not to limit the invention."
4. See Attachment 2, 'What's in a name'. Had the inventor used the name of the elements, the staid conventional characteristics, reactions, and descriptions associated with those elements, (i.e., void of parameter free principles of their basic mechanism, time duration existence, velocities, gravity, particle assembly, and decay, mix angles, etc.,) would likewise be associated with and applied to the

invention. Then…to grasp the basic nature of the inventor's structure, one is hamstrung trying to get beyond the conventional understanding of those elements. Instead, the inventor chose to explain in simplistic detail to teach the principles of energy of each element involved in the invention.

5. Examiner's Answer page 3, "In fact, Appellant attempted to claim in claim 19 (which was objected to because of dependency problems) any symbolic representation of the invention.
6. Claim 19 objected to, subject to petition.

Reference Cited

Discover Magazine, January 1998
The Year in Science
Chemistry
What's in a Name, page 42

(Attachment 2)

Claim 19 preserves the inventor's right to be the lexicographer in naming the inventions' features. The invention is as a newborn child, and is a fitting entitlement of the inventor to assign names, symbols, signs to the newborn, and its offspring, also, to prevent upstarts from pinning on labels offensive to the inventor's intent.

7. Examiner's Answer page 4, "Instead, the claims are directed to deliberately abstract ideas, divorced from any physical structure."
8. With respect to the Examiner's Answer, the issue of the invention's existence as a naturally occurring structure is removed. Thus, the Appellant's response must turn to illustrate the principles utilized by the invention are sound, and not a mere manipulation of abstract ideas; that the invention's structure has connection to a physical structure.

See FIG. 3A of Drawings. The principles used to explain the invention's structure, if applied to phenomenon recently seen by the Hubble telescope, (pictures taken since the date of the inventions application 12/24/95) does also explain those phenomenon. Should an unbiased look occur, the principles used in the inventor's structure stand out bold and clear.

Reference Cited
The Boston Globe, 22 December 1997
Health/Science
Cosmic ornaments

(Attachment 1)

Attachment (1): A newspaper clipping from the Boston Globe dated, 12/22/97, displays various pictures taken by the Hubble telescope to show the PTO, the resultant principles of energy utilized in the invention on a Galactic scale, and is indicative of the invention's connection to physical structures. See FIG. 3, Of Drawings, NGC 6826 corresponds to the inventor's structure at full, *** L, * R** development, along with a view of its supernatural structure, SNS 202. NGC 7009 corresponds to the inventor's structure as it divides. See FIG. 4a of Drawings, M2-9 an archetypal source of Bp. Bp', shows the Bp, Bp' as they leave the PO region. The structures of the Jets (bound trivial) take on the shape and characteristics of the Bps in their makeup. Note the areas within the jets that correspond to 33+½ (18) of invention that eventually become the final unit identity of the structure. See FIG. 3A of Drawings, NGC 5307 (Bp', Bp Combine), IC3568 (neutral state), and NGC 3918 (emerges from Neutral state). Though the invention would appear similar to the above on a galactic scale, the

difference is found in the 33+½ (18) of the invention. What is here in the invention, vis-a-vis is there to the same degree. Yet, when the entire concoction of description of elements, and principles held by conventional science are applied, they fail miserably to predict or explain the phenomenon presented above, of which the invention succinctly details every aspect. One begins to wonder if science, much less the PTO, understands how the principles of energy carry on. Both conventional science and the PTO prove so barren on these matters that in innocence they deprave the inventor and his invention.

9. Examiner's Answer page 3. "A structure which is nothing more than a way of describing the manipulation of abstract ideas is not statutory subject matter under 35 U.S.C. 101. See Warmerdam, 31 USPQ2d at 1760."
10. To justify the PTO's statement, the PTO must hold to these notions: Particle energy is a non-physical element; i.e., the building blocks of matter are considered divorced from any physical structure; principles that describe an element, and its function in finite detail, but avoids the use of conventional names bound by their limited definition, have no merit – and are faulted by the PTO. Again, such innocence enjoyed by the PTO attempts to undermine the inventor's claims by audaciously declaring the inventor's structure as nothing more than...abstract ideas. See, In re Abele, 684 F.2d 902,907, ___U.S.P.Q.___(C.C.PA. 1982); In re Meyer, 688 F.2d 789, 795,215 U.S.P.Q. 193 (C.C.P.A 1982), "If a scientific principle, law, idea, or mental process is included in the subject matter of a claim, the claim is statutory if the idea or mental process is "applied in any manner to physical elements or process steps"

Paraphrase of Warmendams Decision

The Examiner's reliance on Warmendams is misplaced. The energy structure at issue in the inventor's case is a physical,

interconnected assembly of particle energy and thus embraced by the term, "machine". The same cannot be said of the data structure that is at issue in the Warmendam's case. Contrary to the examiner's assertions, the phrase

"data structure" does not imply a physical arrangement of the contents of a memory. Thus, the Examiner's Answer is inapposite.

11. Examiner's Answer, Page 4, "As the Supreme Court held in *Diamond v. Chakrabarty*, cited by Appellant" and comments, "There are no raw materials given new forms, qualities, properties, or combinations by hand, labor or machinery to produce articles claimed in the instant application."
12. On the contrary, Ref: Claim 1 of the invention, "...the Fabricated energy comprising a unitary structure of a single Base Particle (Bp) set to a time opposed opposite (Bp') of itself that together provides the function of energy...." To what obscure fringe of science does the PTO retreat in order to justify and proclaim without grounds or basis of fact that a particle of energy exists without structure? In fairness to sound reason, the PTO must concur that Base Particles (Bps) are the raw material used in the invention's structure and provide patent protection to the invention.

With respect,

Frank R. Bonczyk, Appellant

21 February 1998

Appeal No. 1998-2474
Application NO. 08/578,325

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 12

MAILED
Dec 22 1997
GROUP 2500

Frank Bonczyk
For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed November 1. 1997

A statement identifying the real party in interest is contained in the brief.

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

The statement of the status of the claims contained in the brief is correct.

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The summary of invention contained in the brief is correct.

The summary of the invention contained in the brief is correct.

The appellant's statement of the issues in the brief is correct.

The rejection of claims 1, 9, 11, and 14 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192 (c) (7).

The copy of the appealed claims contained in the Appendix to the brief is correct.

No prior art is relied upon by the examiner in the rejection of the claims under appeal.

No new prior art has been applied in this examiner's answer.

Claims 1, 9, 11, 12, and 14 stand rejected under 35 U.S.C. 101. This rejection is set forth in prior Office action, Paper No. 2.

This examiner's answer does not contain any new ground of rejection.

The Examiner was mistaken in understanding this invention as a model of naturally occurring article; however, the invention is still claimed as a conceptual model completely divorced from any physical structure. According to the brief, the claims are intended to cover such disparate articles as subatomic particles, a "programmable primary life form, a programmable primary memory system, or a programmable DNA structure, or a programmable biotic computer." It is not clear what these things have in common that they could be claimed in a single invention. The nature of the invention was made even more obscure by Appellant's deliberate avoidance, described on page 8 of the brief, of conventional names of elements and structures so as not to limit the invention. (The claims were not rejected under 35 U.S.C. 112 as not being enabling to a person having ordinary skill in the art only because the non statutory subject matter made the question of enablement irrelevant.) In fact,

Appellant attempted to claim in claim 19 (which was obje3ted to because of dependency problems) any symbolic representation of the invention. A structure which is nothing more than a way of describing the manipulation of abstract ideas is not statutory subject matter under 35 U.S.C. 101. See *Warmerdam,* 31 USPQ2d at 1760.

As the supreme Court held in *Diamond v. Chakrabarty*, cited by Appellant on page 5 of the brief, :...the production of articles for use from raw materials prepared by giving to these materials new forms, qualities, properties or combinations whether by hand, labor, or machinery is a manufacture under Section 101." There are no raw materials given new forms, qualities, properties, or combinations by hand, labor, or machinery to produce articles claimed in the instant application. Instead, the claims are directed to deliberately abstract ideas, divorced from any physical structure. *Diamond v. Chakrabarty* explicitly reaffirmed that abstract ideas (along with laws of nature and physical phenomena) cannot be patentable subject matter.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jb

December 11, 1997

Frank Bonczyk
65 Greenhalge Street
Worcester, MA 01613

BRIEF

(Serial No.08/578,325)

IN RE FRANK R. BONCZYK

Frank R. Bonczyk, of Worcester, Massachusetts, submitted Pro Se,

All Rights to Patent are those of

Sole inventor Frank R. Bonczyk

(2) There are no other related cases of appeal and interferences known to appellant.
(3) Status of Claims:
Claims rejected: 1, 9, 11, 12, and 14
Claims objected to: 15, and 19
(4) Status of amendments:

Examiner did not enter amendments filed subsequent to the final rejection.

(8) I, Frank R. Bonczyk, respectfully appeal the final action dated 01/30/97, to patent application Serial NO. 08/578,325: Filing Date 12/26/95: Art Unit 2506, Titled Fabricated Energy, for reasons provided in the following:
For rejection other than those referred to in Paragraph. (c) (8) (i) to (iv)
(v) For each rejection under 35 U.S.C 101

To assert the applicant's structure as being a new and unique tool for one who works the primary field of energy.

The following is a concise explanation of the invention defined in the claims involved in the appeal required by 37 CFR 1.192 (c)(5).

(1) Fabricated Energy: The invention is a fabricated energy structure that shall exploit the underlying mechanism of crystalline structures to cause them to change and replicate toward a desired result. **FIG.3** and **FIG.5**, described in, Description of Preferred Embodiment page 8, lines 11 through 20.

(2) Page 2, lines 1, 2, and 3 of specifications, "This invention relates to fabricated energy structures (root stock) that are particularly useful to tool work in the early stages of pure energy's decay and subsequent assembly for uniform energy" FIG. **3** of Drawings characterizes a schematic view of the invention. Also, a cross sectional taken at section **11** __ **11** of **FIG.10** corresponds to exploded view of **FIG.3**.

(3) Natural Numbers (SNN). The SNS or SNN **202** effect as buds' buried within the 'one unit (structure **10**) that the force produced at the location by the broken or interrupted route, force into action. **FIG. 3**, lines 1 through 6

(4) The invention may be used to preserve the change and/or repair made of life structures, inclusive of the human genome. Whereby, **18+1nf** absorbed by Bp's forms structure **577**, which preserves the original structure of parent, Bp/Bp' as shown by Crown assembly *L, *R of **FIG. 3** in the structure of **FIG. 9** and **10** and described in, Description of Preferred Embodiment, Page 12, lines 5 through 11. Sphericals may be accessed at **16**, **FIG.3** for the repair of stems (shown in phantom) that retains a Crown connection to the strand **12**, thus to unified PO. Page7 lines 12 and 13.

FIG. 4A,clearly shows the timing cycle of the structure in Time (T1,T0) related terms of fixed duration giving movement and structuring function alongside a corresponding Unified PO Realm **33-18**. See **FIG.4A**, and Description of Preferred Embodiment, Page 9, and Lines 18 through 26.

(5) Integration and connection of the inventions structure with other corresponding and non-corresponding structures. Shown in **FIG.7** and **FIG. 9** and described in, Description of Preferred Embodiment, Page 10, Lines 13 through 24.

(6) Basis of Claim 15 (fifteen) objected to subject to petition: The invention's structure and functions blueprint an architectural design for a type of computer that can emulate the invention.

(7) Basis of Claim 19 (nineteen) objected to subject to petition: The invention signifies a portion of the applicant's work with original singular energy and is important to linking future Dependant Patents. Therefore, to focus the invention toward that end of future dependent patents, this invention must not be redefined for any purpose or reason by anyone other than this inventor.

The following is a concise statement of the issues presented for review as required by 37 CFR 1.192 (c)(6)

Ref: PTO office communication dated, 01/30/97

Examiner: Jack I Berman

Art Unit 2506

"Claims 1, 9, 11, 12, and 14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Despite Applicant's attempt to characterize the claimed invention as a "structure" rather than a model, there is still no disclosure of any new composition of matter which could be protected by a patent under the statute. Instead, the claims are directed to a new way of describing something which already exists in nature. To grant a patent on such a description would allow the patent owner to exclude others from using the naturally occurring structure described, not just from using the new way of describing it set forth in the claims. Such exclusion would constitute the removal of the naturally occurring structure from public domain. Patent Law does not permit such removal."

Subject to petition: "Claims 15 and 19 are objected to under 37 CFR 1.759 (c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim."

Argument

1. The statements made in the PTO response dated, 01/30/97, "...a new way of describing..." said, "...naturally occurring structure..." implies the patent office holds incontrovertible proof the invention described is a natural occurring structure of nature. With such proof at hand, the PTO asserts blanket reason to deny the applicant patent protection. Thus, "new physics" appears to exist exclusively in the domain of the Patent Office. Yet, conventional physics understanding that allows $E=MC^2$ as the new way of describing existence, holds no such proof. Barring use of PTO's presumptions for want of proof, the applicant's

structure explained in sequential detail deserves just and fair reconsideration of the inventor's patent rights. Such that the definitions of the applicant must be allowed to stand and move beyond PTO's exclusions based on naïve assumptions of natural occurring existence. Rather than allow an understanding of the invention, the PTO use of the word "attempt" discredits the inventor's effort to redefine what was in the first instant not taken in proper context by the PTO. Whereby the PTO redefines the applicant's "model" by inserting a "theory" definition to characterize the invention—then states the structure (model) already exists in nature. The PTO's statements are contradictory in nature. Blatant semantics jeopardize the applicant's patent rights. Any word used to describe the invention if allowed with the applicant's definition intact, would wholly interpret and qualify the invention as statutory subject matter. Based on the decision of the Supreme Court in Diamond v. Chakrabarty, 206 USPQ 193 (1980), MPEP (page 1367), 3. "The Act embodied Jefferson's philosophy that 'ingenuity should receive a liberal encouragement. 'V Writings of Thomas Jefferson, at 75-76... that Congress intended statutory subject matter to 'include anything under the sun that is made by man.' S. Rep. No. 1979, 82d Cong. 2d Sess., 5 (1952)." Chakrabarty opinion also reveals, MPEP (page 1368), –"However, the production of articles for use from raw materials prepared by giving to these materials new forms, qualities, properties, or combinations whether by hand, labor or machinery (emphasis added) is a manufacture under Section 101." Yet, the PTO persists on ignoring the criteria of existence required by the invention. The PTO's rubber stamp use of pseudo reason to deny the applicant's definitions disregards,

> MPEP (page 1371), A. (last paragraph.) "The applicant is in the best position to explain why an invention is believed useful. Office personnel should therefore focus their efforts on pointing out

> statements made in the specification that identify all practical applications for the invention. Office personnel should rely on such statements throughout the examination when assessing the invention for compliance with all statutory criteria. An applicant may assert more than one practical application, but only one is necessary to satisfy the utility requirement. Office personnel should review the entire disclosure to-determine the features necessary to accomplish at least one asserted practical application."
>
> And also disregards,
>
> The first paragraph of section 112 states: "...the best mode contemplated by the inventor of carrying out his invention..."

3. To deny patent protection for the applicant's structure, based on the PTO claims, that the structure, "naturally exist in nature," suggest all applicants whoever submits a similar structure or mutation, abstraction, or synthesis of said or similar structure, that exist naturally in nature, would also be denied patent protection. Yet, the PTO readily provides patent protection for synthesis of naturally occurring structures found in nature. However new the ways are used to describe something that exist, the mutation or abstractions of, and synthesis of what exist, cannot be disconnected from what exist naturally in nature.

Reference Cited

5,565,199	Oct., 1996	Page	424/195.1
5,604,213	Feb., 1997	Barrie	513/176

Attachment (2)

4. To exclude the applicant from patent protection on this structure, then allows those who simply fashion a way to discover, duplicate, copy, synthesize abstracts of such structures similar to the applicant's that do exist naturally in nature discloses inconsistency in PTO rulings. For it is shown by the applicant's detailed structure (which the PTO admits in its own words as being a natural structure existing in nature), the ability to duplicate and mutate is a natural occurrence of all such structures that exists. In order to harness and make use of these natural occurring structures, one must follow exactly the function of energy, else it fails to exist—naturally or otherwise. Questions then arise: How does the PTO discern "naturally occurring existence" from "unnaturally occurring existence?" Does the PTO in a likewise twist they make of the inventor's words also attempt to use a new way to define something which does not already exist in nature, to exclude the applicant from retaining the naturally non-occurring structure from the public domain. Patent law permits such removal as an individual's patent right. Both existence and non-existence occurs in the applicant's disclosure of the structure, a structure the PTO states already exists naturally in nature; and prompts these questions of the PTO: Where does nonexistence exist naturally in existence? Where does the PTO find the inventors Fabricated Energy structure existing naturally in nature other than where the applicant has placed it, to justify denying him his patent Right?

5. The principles of energy functions expressed in the applicant's structural process are void of the numerous free parameters that infest conventional scientific expressions in the arena of sub-particle fields and structures.

Reference Cited

Express Mail EI706621537US

Paul Langacker, "Particles and Fields –1983 (APS/DPF, Blacksburg VA)" AIP Conference Proceedings Number 112, Subseries on Particles and Fields No.32, American Institute of Physics (1984) pp. 251-252

(Attachment 1)

5. The argument then expends on the semantics of what does and does not exist naturally in nature and ignores what influence the invention has on the nature of existence. The applicant's structure depends fully on the nature of energy – it's function and limitations as described in sequential detail in the application. There is no peer in science to date that can co-ordinate the function of energy to create the applicant's structure. An iota otherwise than explained by the invention fails to create such a structure, nor the results that follows.

6. The labyrinth of free parameters that weaken conventional physics understanding disqualifies any pragmatic conviction by anyone to evoke what does and what does not exist naturally in nature, in order to pass judgement. Otherwise, innocent statements arise whereby nature itself cannot be considered a natural occurrence. For example: In light of the PTO declaring this unique structure presented in the application as a, "natural occurring structure existing in nature," the PTO inadvertently (especially when one considers the arena the applicant's structure thresholds) directs to construe the inventor's structure as 'NATURE', itself. Flattering as this may be for the inventor, the practical aspect must humbly reduce the applicant's structure to the simple tool it is, and provide it patent protection essential to the inventor's further works. (Work unique in the radical mutation of life structures).

Should the PTO fail to comprehend the subject matter of this invention at this time and denies patent protection, the applicant with limited resources, without further support, goes elsewhere. And leaves his/her so-called naturally occurring structure, as the PTO says, for the public domain to find and make use of.

Grave injustice is done if of a later date the PTO accepts definitions denied this applicant, and allows another applicant patent protection on the very same or similar structure or mutations thereof. Mores are violated if this applicant then be also denied the rewards of his work given up to another applicant's protection by the PTO, who simply copies this applicant's work. What recourse then for this humble and loyal citizen? -- Titans v. Non-Existence?

For the sake of clarity of description, the use of mathematics simply enforces the particular characteristics of energy that are employed in the invention, and nothing more. Whereby, the obvious utility of the invention is revealed.

The inventor deliberately avoids the use of conventional names for elements and structures to identify them, so as not to compromise the invention with features void in the definition associated with those elements and terms. (With reluctant exception, the words photon, meson, etc., were used more as a point of reference to indicate the arena of inventors work, much as one uses the north star, than for their conventional meaning.) Thus, the inventor's due cause disclosed in sequential detail, all functions of those elements and their structure as they are used in the invention.

The first paragraph of section 112 states: "...the best mode contemplated by the inventor of carrying out his invention..."

Those of ordinary skill in the arts would readily recognize the elements and structures inclusive of the added features by the inventor.

To have the inventor redefine the invention's scope and claims, again would compromise the numerous variable structures the invention is capable of achieving – with or without man's hand, once the structure is placed in a particular environment.

That is: To call the applicants structure a programmable primary life form, or a programmable primary memory system, or a programmable DNA structure, or a programmable biotic computer, would obviously lend to the inventions limitations; or more, to declare the applicant's structure, a structure, "that exist naturally in nature" as the PTO has done, directly calls the invention all of the above and more. Though the applicant's structure threshold's existence, it is, if one of ordinary skill in the art considers the limitations provided in the definitions and claims, would find the invention useful in the manner of application defined by the inventor. To reduce the structure to practical practice involves no more effort than planting a seed and caring for the results.

With respect,

Frank R. Bonczyk, Applicant

31 October 1997
Express Mail EI706621537US

APPENDIX

Claims involved in appeal

1. A fabricated energy structure for a uniform energy of the type having a single nature separated to oppose itself by a precise alternate time duration of existence that creates the dual nature for supporting and extending the Fabricated energy comprising a unitary structure of a single Base Particle (Bp) set to a time opposed opposite (Bp') of itself that together provides the functions of energy molded from decayed energy from 'The Unified PO Realm' and including a lattice strand portion in the form of a consequential open strip adapted to curve in attempt to bind at the ends in a trivial or nontrivial bundle to form the ring strand, producing a trivial or nontrivial structure, that will act as an energy root stock, said strand portion including a symbiotic mass assembly portion (rib) at one end thereof as residual, and an integral orthogonal stem portion extending from said strand portion to support and structure one (+) and the other (-) energy nature in the elevated position to monitor, interpret, adapt, maintain other neighboring energy structures and to duplicate of itself

9. A structure in claim **1** wherein said symbiotic mass assembly portion at one end of said strand portion includes an additional residual embedded therein (called super natural __ bud or number).

11. A structure as claimed in claim **1** wherein the (+) and (-) energy nature in the elevated position integrates with corresponding orthogonal (+) and (-) strands, thus also

connects to other corresponding energy natures in the elevated position

12. A structure as claimed in claim 11 wherein the corresponding orthogonal (+) and (-) strands, thus also connects to other non-corresponding energy natures in the elevated position.

14. A structure as claimed in any one of the preceding claims, which consist essentially of primary life structures in whole and or of their individual parts, advanced life structures in ~~whole and~~ or of their individual parts, biogenic structures in whole and or of their individual parts.

Claims objected to subject to petition

15. A structure as claimed in any one of the preceding claims, which consist essentially of computer timing circuits, computer codes, computer algorithms, and or computer programming.

19. A structure as claimed in **any one of the preceding claims**, which consist of fixed and or variable Symbols, Alpha /Numeric, Electronic/Biotic, Audio/Visual, however structured for the purpose of interpretation, substitution or reproduction of each or any combination of each description and function of said invention to alter the intent and focus of said invention.

Frank R. Bonczyk, Applicant
31 October 1997

Express Mail EI706621537US

Patent and Trademark Office Action Summary
PTO Responsive to communication filed on Nov. 7,1996

1. Claims 15-19 are objected to under 37 C.F.R § 1.75 (c) as being in improper form because a multiple dependent claim cannot depend from another multiple dependent claim. See M.P.E.P. § 608.01 (n). Accordingly, these claims have not been further treated on the merits.

35 U.S.C. § 101 reads as follows:

"Whoever invents or discovers any new and useful process, machine, manufacture, or improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title".

Claims 1,9,11,12 and 14 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Despite Applicant's attempt to characterize the claimed invention as "structure" rather than model, there is still no disclosure of any new composition of matter which could be protected under the statute. Instead the claims directed to a new way of describing something which already exists in nature. To grant a patent on such description would allow the patent owner to exclude others from using the naturally occurring structure described, not just from using the new way of describing it set forth in the claims. Such exclusion would constitute the removal of the naturally occurring structure from the public domain. Patent law does not permit such removal.

"s/JACK I BERMAN."
PRIMARY EXAMINER
GROUP 2500

Jb
January 28, 1997

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire THREE MONTHS from this action. In the event a first response is filed within TWO months of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.13(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jack Berman whose telephone number is (703) 308-7723. All "Draft" copies should be labeled as such.

"s/JACK I BERMAN."
PRIMARY EXAMINER
GROUP 2500

Jb
January 28, 1997